

PETROLEUM TANK RELEASE COMPENSATION BOARD  
MINUTES  
Teleconference Business Meeting  
June 18, 2018  
Lee Metcalf Building, Room 111, 1520 E 6<sup>th</sup> Avenue  
Helena, MT

Board members in attendance via teleconference, as confirmed by roll call, were Keith Schnider, Jim Corson, and Heather Smith; Board Members in attendance in Room 111 of the Lee Metcalf Building were Jerry Breen, Mark Johnson, and Ed Thamke. Mr. Thompson was absent from this meeting. Also in attendance in Room 111 were Terry Wadsworth, Executive Director; Kyle Chenoweth, Attorney for the Board; and Ann Root and Garnet Pirre, Board staff.

Presiding Officer Jerry Breen called the meeting to order at 10:03 a.m.

**Approval of Minutes – April 9, 2018**

Mr. Breen asked for comments and if there were any concerns.

Mr. Johnson noted that the Board members had received a full transcript of the April 9, 2018 meeting and a summary form of minutes in the packet. He asked if the Board would be approving both the summary form and the transcript.

Mr. Wadsworth stated that the transcript was included for reference and provided at the request of the Presiding Officer. He indicated the Board could approve both, but noted that the summary version was bound in the packet and was the only one seen by the public.

Mr. Johnson noted that there was no discussion of minutes on the agenda for this meeting, although it had been voted on at the last meeting. Because of that, he felt that the minutes could be approved with the retention of the recording.

Mr. Corson asked how much it cost for the transcript to be completed. Ms. Pirre stated that it cost \$1,100.00.

Mr. Corson asked how much time Ms. Pirre spent on the minutes. She indicated that she wasn't quite sure, as it was part of her job activities, but that every meeting took a considerable amount of time regardless of whether there is a transcript to correct or not. She stated that having the transcript was helpful because it was a lengthy meeting. However, even though the transcript was available, the time it took to prepare the minutes was within range of time normally spent on the minutes. The transcript did provide the verbatim portion that is required for comments during the public forum. Normally, Ms. Pirre must provide the verbatim transcript of the public forum herself.

Mr. Thamke motioned to approve the minutes as presented.

Mr. Breen asked for questions or concerns about what was in the summary minutes as compared to the transcript. Mr. Johnson said he was not concerned as long as the staff retains the audio recording of the meeting until the minutes and record keeping discussion takes place. Mr. Breen asked if anyone had any qualm with what was in the minutes. There was no further discussion.

Mr. Thamke withdrew his motion and deferred to Mr. Johnson.

**Mr. Johnson moved to approve the minutes as presented in the packet, and keep the recording until the discussion on minutes took place and could be resolved. Mr. Corson seconded. The motion to approve the minutes as presented and keep the audio recording of the April 9, 2018 meeting, until the Board discussed minutes and the keeping of audio recordings, was unanimously approved by roll call vote.**

**Weekly Reimbursements and Denied Claims**

Mr. Wadsworth presented the summary of weekly claim reimbursements for the weeks of March 28, 2018 through May 30, 2018, and recommended the Board ratify the reimbursement of the 163 claims, which totaled \$886,635.81 (See, table below).

<b>WEEKLY CLAIM REIMBURSEMENTS June 18, 2018 BOARD MEETING</b>		
<b>Week of</b>	<b>Number of Claims</b>	<b>Funds Reimbursed</b>
March 28, 2018	21	\$66,107.06
April 4, 2018	11	\$109,095.81
April 11, 2018	9	\$181,981.65
April 18, 2018	22	\$69,700.19
April 25, 2018	16	\$105,260.68
May 2, 2018	19	\$90,625.73
May 9, 2018	26	\$141,932.28
May 16, 2018	16	\$54,379.73
May 30, 2018	23	\$67,552.68
<b>Total</b>	<b>163</b>	<b>\$886,635.81</b>

Ms. Smith recused herself from voting on any claims associated with First Interstate Bank. Mr. Schnider recused himself from voting on any claims associated with Payne West Insurance. Mr. Corson recused himself from voting on any claims associated with First Interstate Bank.

Mr. Wadsworth noted that denied claims 20180102D, 20171023D, 20170810G, 20170711H, 20170711G and 20170605B were ones that had been voted as denied at the April 9, 2018 board meeting. Although they have been processed, the business process is such that those claims come before the Board for ratification. Denied claim 20170911D was withdrawn by the claimant, the consultant. Denied claim 20180305C had work plan (WP) prep costs that exceeded the maximum reimbursement amount budgeted for that task. Denied claim 20180320H was denied because the costs associated with it had already been reimbursed on claim 20180220C.

Mr. Johnson asked if any of the claims presented were being disputed. Mr. Wadsworth answered that he was not aware of any disputes for any of the claims presented.

**Mr. Thamke moved to accept the weekly and denied claims as presented. Mr. Johnson seconded. The motion was unanimously approved by roll call vote.**

**Board Claims – Claims over \$25,000**

Mr. Wadsworth presented the Board with the five (5) claims for an amount greater than \$25,000 that had been reviewed by Board staff since the last board meeting (See, table below).

Facility Name Location	Facility-Release ID#	Claim#	Claimed Amount	Adjustments	Penalty	Co-pay	**Estimated Reimbursement
Mini Mart 710, Glendive	1105093-4907	20180314A	\$39,052.87	\$7,562.07	30% (\$9,447.24)	-0-	\$22,043.56
Cut Bank Municipal Airport	1800137-3076	20180321A	\$28,913.81	-0-	-0-	-0-	\$28,913.81
Former Falcon Bulk Plant East, Kalispell	1501678-4402	20180411B	\$26,511.61	\$36.00	-0-	-0-	\$26,475.61
Lee Anns Motel, Poplar	4301701-1537	20180514C	\$22,129.74	-0-	-0-	-0-	\$22,129.74
Lee Anns Motel, Poplar	4301701-1537	20180514D	\$5,956.89	-0-	-0-	-0-	\$5,956.89
<b>Total</b>			<b>\$122,564.92</b>				<b>\$105,519.61</b>

In accordance with Board communication of delegation to the Executive Director signed on December 8, 2003, the Board staff will review the claims for the Board. If the dollar amount of the claim is above \$25,000.00, the claim must be approved and ratified by the Board at a regularly scheduled meeting before reimbursement can be made.

\*\*If other non-Board claims are paid between this board meeting and payment of the claim listed above, the amount of co-payment remaining may differ from that projected at this time, which may change the estimated reimbursement.

Mr. Wadsworth noted that neither of the claims for Lee Ann's motel were over \$25,000.00, but when the staff contacted the claimant, the claimant stated that they had broken the claims into two amounts so as not to go over the \$25,000.00 and thus become a Board Claim. Mr. Wadsworth stated that Board staff requests that claimants not usurp the normal Board process and create more work for the staff by making two claims instead of one.

Mr. Johnson asked Mr. Wadsworth about the split claim and stated that some consultants submit claims on a monthly basis. He wondered if that could cause the same problem as seen on the claims for Lee Ann's Motel. Mr. Wadsworth indicated that it was normal to see monthly invoicing, however, these two claims were submitted for invoices that had the same date. The charges weren't from separate months.

Mr. Thamke asked who the consultant was for this site, and if there was a rationale provided by the consultant for splitting the claims apart. Mr. Wadsworth said that NewFields was the consultant, and that when Board staff contacted them directly, they stated that the only reason they broke the costs into two claims was to avoid it coming before the Board as a Board claim.

Mr. Thamke noted that the owner for Lee Ann's Motel was Keith Red Elk. He wondered if the release was from tanks owned by the Tribe and questioned why the Fund would be reimbursing the Tribe. Mr. Wadsworth stated he didn't know if the tanks were owned by the Tribe but that tribal tanks could still be eligible for the Fund. Mr. Thamke stated that they had to opt in. Mr. Wadsworth indicated the Tribe may have purchased the property after the release was discovered. Ms. Pirre stated that she believed that Mr. Red Elk was a new owner. Mr. Wadsworth stated that the eligibility would still transfer to the new owner. It was agreed that research would be done and given to Mr. Thamke regarding this site. After the meeting, Ms. Pirre researched Facility #4301701 and found that there was no evidence of the tanks at the site having ever been owned by the Tribe, but that Mr. Red Elk was a Tribal member.

Mr. Schnider recused himself from voting on any claims for Payne West Insurance.

**Ms. Smith moved to accept the claims as presented. Mr. Johnson seconded. The motion was unanimously approved by roll call vote.**

#### **Discussion Item - Staff Participation in Work Group**

At the April 9, 2018 meeting, Mr. Thamke had moved to place a discussion item on the June 18, 2018 meeting agenda regarding the staff's participation in a work group, and the motion was unanimously approved. Mr. Breen asked Mr. Thamke to present the Board with his thoughts.

Mr. Thamke said that when there are discussions with the consultant's group and when they come before the Board, there is a confusion and a desire to better document and agree on terms. Mr. Thamke provided the example of scoping meetings. Mr. Thamke stated that DEQ has a Tank Triune that is used to discuss issues. He noted that there had been a Cost Control Work Group with the consultants in the past. He wanted to ask Mr. Wadsworth why that work group didn't come to fruition and what needed to be done to resurrect it. He saw the work group as a mechanism where definition issues could be resolved that may have otherwise come before the Board. He thought it would be good to work in a collaborative manner to ratify definitions on what can be reimbursed and what isn't eligible. If everyone has an expectation with regards to fixed costs or variances, it affords more clarity for the owner/operators of the facilities and the consultant community. This aids in the mission of the Board's fiduciary responsibility to protect the Fund. Mr. Thamke envisioned the work group as a conveyance for everyone to do a better job.

Mr. Breen asked who would be on the work group. Mr. Thamke stated that it would be important for the Executive Director to be on it and for the Board to decide if it would be a Board driven process or not. Mr. Breen thought there should be consultant representatives as well as someone from the Service Station Dealers group.

Mr. Thamke stated that at the last meeting he didn't know that Mr. Thompson was not going to continue to be on the Board. Until Mr. Thompson's position is replaced, there isn't currently a representative from the Service Station Dealers group. He wants to make sure the owners and operators are adequately represented.

Mr. Johnson stated that we have to be careful of our naming because "Cost Control" has the implication of government control over the private sector pricing, and he proposed naming the work group "Cost Optimization".

Mr. Thamke wanted Mr. Wadsworth to provide a history on the group and stated that he wanted to know where we had been, to better decide where we should go. Mr. Wadsworth noted that there are two (2) consultant meetings per year, one in the Spring and one in the Fall. Those meetings provide an opportunity for the consultants to express concerns they have regarding the Board's business process. This is also an opportunity to vet issues. He stated that, out of those meetings, the consultants had come before the Board and asked the Board to participate in a work group. Three (3) Board members volunteered. Two (2) Board staff members, as well as some people from DEQ's Remediation Division and a diversified group from the consultant's industry were also members of the work group. The consultants had appointed four (4) people to the work group and tried to establish a diverse group with regards to the size of the company and its location and size. Mr. Wadsworth indicated that the work group held a couple of meetings and there was a document produced by some of the participating consultants that was provided to the Board. That was where it ended.

Mr. Breen stated that he remembered one meeting. Mr. Wadsworth stated it may have been one face-to-face and one teleconference meeting.

Mr. Thamke asked if the recommendations provided to the Board were in a packet somewhere. Mr. Wadsworth indicated that they were part of a packet and stated that if they weren't currently available online, they could be provided. Mr. Wadsworth stated that the difficulty the Board had with the recommendations was that they didn't come from the work group as a whole. The work group met and discussed, and the consultants went on their own and created a document. Mr. Thamke asked why there wasn't a consensus from the group. Mr. Wadsworth stated that the work group was put together by the consultants and the meetings attended by all other participants were by invitation. The consultants didn't invite the other participants to the meeting where the recommendations were produced.

Mr. Johnson noted that Mr. Alan Stine, Olympus Technical Services, was in the audience and that he had been part of the consultant's work group. Mr. Johnson asked Mr. Stine if he wanted to make any additional comments regarding the group. Mr. Stine stated that there were several meetings and that he believed the work group had been put together by both DEQ and the Board. Mr. Stine said that the consultants didn't decide who to put on the group, they were invited to participate. Mr. Stine stated that Mr. Wadsworth was correct, there wasn't good participation throughout the group, but he felt the work group would be helpful if there was good participation. He said that if this were to happen again, there would need to be full participation from all parties and there would need to be consensus from all parties.

Mr. Thamke asked Mr. Stine if there were too many participants and if the group could be more valuable if it was smaller. Mr. Stine stated that the problem was the leadership. There was not involvement by everyone, and all would need to have a commitment to participate in it, if it was to happen again.

Mr. Johnson asked if any of the owner/operators were part of the group. Mr. Breen asked if he meant Service Station Dealers. Mr. Johnson affirmed. Mr. Breen said that he was there for one meeting and wasn't invited to any other meetings.

Mr. Thamke stated that Mr. Stine brought up a good point about leadership and asked if the meetings were facilitated or ad hoc. Mr. Breen stated that the one meeting he went to was facilitated by someone DEQ uses on a regular basis. Mr. Thamke asked if it was Becki Bramborg. Mr. Wadsworth affirmed that Ms. Bramborg was the facilitator used.

Mr. Breen asked if the point of this was to bring the work group back. Mr. Thamke stated that he wanted to discuss it, because he hadn't been down the path, but the Board had been. He wanted to know if there was any value in it, or if there was a different way to go about it.

Mr. Johnson stated that there is a difficulty in persons of the private sector attending these meetings because it costs them time. Some of the questions may be simple enough to be addressed directly to the Board. He stated that the issue of scoping meetings could be handled by the Board. There are other issues that may need a more formalized process that could be added to the consultant's meetings, but would need to have participation from other representatives. He noted that a hurdle to full participation would be the time commitment needed.

Ms. Smith asked if there shouldn't be a financial parameter put in place for larger WPs to help facilitate discussion for issues that are of higher priority and value. Mr. Johnson asked if that meant the issues would be identified and then prioritized as to whether they should come to the Board or be part of the work group discussion. Ms. Smith stated that she didn't want to put more work on the Board staff, but she thought that it may be helpful to have more planning in place to more quickly and cost effectively deal with cost overruns.

Mr. Breen asked if the discussion was whether the Board thought it was worthwhile to have Board staff participate in a work group. Mr. Thamke stated that there could be an alternative that perhaps the more difficult areas that have been identified in other dialogues could be dealt with as a Board. He said that the Board could say whether or not scoping meetings or other issues are allowed by the Board. He said that they could be put on the agenda and dealt with.

Mr. Breen asked for clarification and asked if the work group would look at whether scoping meetings were allowed for a particular site. Mr. Thamke said that the work group could deal with those areas that need reconciliation by the Board. Mr. Thamke said scoping meetings would be a potential subject and other issues that haven't dovetailed as well as they should or could.

Mr. Johnson stated that the topic of scoping meeting was a general topic as an allowable cost rather than scoping meetings for specific sites. The discussion would be scoping meetings to be an allowed cost overall. He stated that the original motion at the April 9, 2018 Board meeting was to discuss scoping meetings. Mr. Johnson wanted to make sure that the original motion and subsequent discussion was satisfied.

Mr. Chenoweth said that the earlier conversation between Mr. Johnson and Ms. Smith seemed to use the terms work groups and scoping meeting interchangeable. He wanted it to be clear what the discussion was about. Mr. Johnson stated that the original motion was to discuss scoping meetings, as motioned by Mr. Thamke, and wanted to make sure that the discussion was a satisfactory way to discuss things. Mr. Thamke stated that he was satisfied.

Mr. Thamke stated that he just wanted to have a discussion and find a path forward.

Mr. Breen stated that the intent was to discuss having a work group with Board staff participation and asked if that was true. Mr. Breen indicated that Mr. Schneider had been at the work group meetings.

Mr. Schneider stated that it was a barrage of topics that was really hard to narrow down to any items that could be accomplished. He stated that it turned very open-ended and things weren't accomplished. He stated that his

reservation with this is that the group could get side tracked relatively quickly, and things wouldn't be finalized, which is what had already happened.

Mr. Breen stated that what he was hearing is that the work group would cover all the topics, like scoping meetings and shipping and it would be discussed and then brought to the Board. Mr. Breen also asked if that was something that needed to be put on the agenda.

Mr. Thamke said that he felt it warranted more discussion. He stated that for formality sake, some of this would have to be part of the Board's agenda and directive. He didn't want to reinvent a wheel that was flat but wanted to find a better way of doing it.

Mr. Johnson asked if this would have an impact on someone who had a grievance outside of the work group, would it have to be filtered through the group. Mr. Thamke stated that he wasn't abdicating any responsibility. He just wanted to provide a forum for the people on the group, who are having issues, to be able to identify those issues that need to be elevated to the level of ratification or promulgation. He wanted to provide a better conversation than has taken place in the past.

Mr. Johnson asked if that needed to be Board driven, or if DEQ could facilitate it. Mr. Thamke stated that the Tank Triune meeting was already a facilitative tool, and if that had been tried and hadn't worked to the satisfaction of all the parties, maybe there was another path forward. That is where he saw the Board taking ownership as being valuable. Mr. Johnson stated that was especially true if looking at "Cost Optimization".

Mr. Breen expressed concern about a work group being a filter for a person with an issue. He stated that he didn't think the Board was trying to create another group that had authority to hear people. He stated that he thought the Board would keep its same functions.

Mr. Breen asked if Mr. Wadsworth had comments or suggestions. Mr. Wadsworth indicated that the staff could compile the list of issues. Mr. Breen asked if there first needed to be a committee.

Mr. Thamke stated that the Board should accept Mr. Wadsworth's offer to compile the list of issues from the previous efforts. That would provide a more informed discussion to take place as to how those issues can have resolution.

Mr. Breen asked for more comments. Ms. Smith concurred with Mr. Thamke and wanted more historical information of what had happened with the previous work group. Mr. Johnson stated that the recommendations from the previous work group should be part of the list compiled by Board staff.

Mr. Breen asked if the Board wanted the discussion to take place with a full Board in attendance. He stated that there was already one empty seat that day, Mr. Thompson. Mr. Johnson said that was a good point, and Mr. Thamke stated that the Governor's office could be contacted to inquire about a new appointee. Mr. Johnson agreed that it would be good for a full Board to make any decisions about eligible costs.

Mr. Breen asked if there was a vote that needed to be taken. Mr. Wadsworth stated that it sounded like the Board could instruct Board staff to pull together a list of issues known from the previous work group, and the list of recommendations that were before the Board at the time the work group made its presentation.

Mr. Johnson asked if it would be ok to solicit concerns from regulated parties and owners/operators. Mr. Wadsworth indicated that could happen and that in the past the issues were gathered through a SurveyMonkey® sent out to interested parties. Mr. Wadsworth stated that could be done again, and that any new items could be added to the list for discussion. Mr. Johnson stated that he wanted the Board staff to send out the question via SurveyMonkey®. Mr. Thamke agreed, as long as it wasn't onerous.

Mr. Breen indicated that on the next agenda, the discussion could cover who was going to be on the work group. Mr. Thamke said that the discussion would cover previous efforts and decide if the issues warranted the creation of a work group.

Mr. Breen asked for further comments. There were none.

## **Board Attorney Report**

Mr. Chenoweth provided an update to the Board on the Cascade County matter and Keenan and Associates, (See, table below). Mr. Chenoweth stated that not much had happened in either of the cases at the time the report was published. However, since the mailing of the packet, the Cascade County Shops case has had agreement between both parties on the stipulated facts, and have sent it back to the District Court for a decision. Both Mr. Chenoweth and the Cascade County attorney agreed that the facts were contained in the record, and by agreeing on the stipulated facts, they presented the Court with the further clarification it requested in order to render a final decision. There is an anticipated single briefing from each side if the Court agrees.

<b>Location</b>	<b>Facility</b>	<b>Facility # &amp; Release #</b>	<b>Disputed/ Appointment Date</b>	<b>Status</b>
Great Falls	Cascade County Shops	07-05708 Release 3051-C1,3051-C2,3051-C3 AND 3051-C4	Denial of applications	Lewis & Clark County District Court remanded the case back to the Board to make further factual findings. The parties have conferred with each other and are in the process of drafting a series of stipulated facts that will assist the Court in making a final decision.
Billings	Keenan & Associates	56-13771 3034	Denial of Reimbursement of Ineligible Costs	Order appointing Ann Brodsky as Hearing Examiner made April 2, 2018.

Mr. Johnson asked what the nature of the hearing would be with Keenan and Associates. He wondered if it was before the Board, in front of an outside person. Mr. Chenoweth stated that he believed the plan would be to have it before the Board. He stated that his interpretation of the Board Rules would make this a hearing conducted by the Hearing Examiner but held before the Board and that the Board could participate. The Hearing Examiner could give the Board an opportunity to have input. The Hearing Examiner would make a recommendation to the Board and the Board could vote. Mr. Johnson stated that he understood there would be Board participation.

Mr. Chenoweth conveyed that Mr. Johnson had asked when the hearing might happen. Mr. Chenoweth believed that these hearings have been fairly lengthy in the past and are usually scheduled outside of a regular board meeting. Mr. Chenoweth stated that, based on his understanding, the hearing would take place before the Board.

Mr. Wadsworth indicated that for contested matters before a hearings examiner that what usually has taken place is; if the matter is just a factual case, that is, a case being decided only on facts, there is no face-to-face hearing that occurs. A case like that is conducted simply through briefings. No one is being deposed or brought forward as a witness, therefore there is not much value in having it before the Board. Mr. Wadsworth indicated that Mr. Johnson could read the draft brief being submitted by our attorney for the case and could provide input to the Board attorney.

Mr. Chenoweth clarified, if a case is being decided on facts, a clearer statement of this would be a case being decided on contested facts. In this case, there doesn't appear to be any contested facts and it appears that there would only be a determination of the law.

Mr. Johnson stated that he believed there were disputed facts. He said that DEQ stated what would be required and where contamination was coming from. He said that the WP was approved and obligated by the Board, and it seemed like it would be appropriate for the hearing to take place before the Board. He wanted to make sure there was Board participation. He stated that it seemed like there were more questions of science here and regulatory enforcement than of legal issues.

Mr. Chenoweth stated that Mr. Wadsworth was alluding to the potential for briefings to take place prior to a hearing before the Board. Mr. Wadsworth stated that it would depend on the Hearing Examiner. Mr. Chenoweth stated that the briefing would be to clean up the list of issues that would be coming before the Hearing Examiner.

Mr. Wadsworth stated that, in the event the Hearing Examiner plans to carry out a hearing, the notice will be provided to the Board so that the Board can be made available for the hearing. The whole Board could then go and

ask questions at the hearing. He indicated that in most of the cases, there is no face-to-face hearing. If this matter is handled through briefings only, the Board is welcome to read, review and, if necessary, delay the submittal of the briefings so that the Board can vote on the brief.

Mr. Johnson stated that, presumably DEQ would be providing input to the Hearing Examiner. Mr. Wadsworth stated if there was a request from the other side or the Board, they would.

Mr. Johnson asked if the briefing process would require the owners to have a lawyer, or if they would only need a lawyer if it was a face-to-face hearing. Mr. Chenoweth stated that was a determination the Hearing Examiner would make. He stated that if the Hearing Examiner needed all parties to be represented, they would need that legal representation during briefings as well.

Mr. Thamke stated that in his experience, Hearing Examiner's tasks are in Findings of Facts and Conclusions of Law. He stated that it was in the responsible party's best interest to have legal representation, because it is going to be a conclusion of law. How the legal aspect is presented to the Hearing Examiner is important.

Mr. Johnson stated that he thought that at the Hearing level people were required to have legal representation, per statute. Mr. Chenoweth stated that he had the same understanding as long as the party was a business, not a private individual.

Mr. Johnson asked if there had been any response from Keenan and Associates. Mr. Chenoweth stated that he hadn't received anything. He was going to request a scheduling conference with the Hearing Examiner to get a response from Keenan and Associates to see if they would like to keep proceeding.

### **Fiscal Report**

Mr. Wadsworth presented the Fiscal Report through May 31, 2018. The numbers needed to complete the fiscal year-end report won't be available until the end of July.

Ms. Smith asked why the personal services were over budget on both Board staff and DEQ staff. Mr. Wadsworth stated there were some changes that went through by the Legislature. He said there were increases from the job matrix evaluation that was completed, and that the budget is never projected for 100% of personal services. The budget is only projected to account for around 94% of the total amount needed during any fiscal year.

Mr. Corson asked about the beginning Fund balance and projected Fund balance for the end of the year. It looked like the Board was scheduled to have about \$2,000,000.00 less than when the year started. He recognized that there was \$1,000,000 taken by the Legislature, and wondered if Mr. Wadsworth saw any problem with that lower amount in cash.

Mr. Wadsworth stated that the amount in the bank fluctuated with the amount of claim activity that occurs. This fiscal year there was a little more claim activity than last year. The Fund had \$4,000,000.00 in the bank, and having a lower balance may keep the Legislature from taking more money. It will be good to keep the balance at \$2,500,000.00, assuming there is work taking place on the ground.

Mr. Corson asked the difference between the Fund balance and the Cash balance. Mr. Wadsworth stated that the difference is accrual accounting versus cash accounting. The claims in process have to be accounted for, accrued.

Mr. Johnson asked if now would be a good time to come to the Legislature to request a fee increase based on the \$1,000,000.00 taken during the special session. He felt that there may be a strong case made for increasing the fee. He wondered what the Board was going to do moving forward. Mr. Wadsworth stated that it was difficult to go to the Legislature and ask for a fee increase when the Fund has a positive balance. The Board would have to be headed into the negative to be able to go to the Legislature and ask for a fee increase, and be successful. Additionally, the Board and staff can balance the work load with the cash coming in.

Mr. Johnson stated that he felt it was a strong case to tell the Legislature that the \$1,000,000.00 taken had to be made up from somewhere. Mr. Wadsworth stated that if there was enough claim activity that the money taken started to impinge on the Fund's ability to pay claims, that would possibly be a stronger case for a fee increase.

Mr. Breen commented that he was part of the Petroleum Marketers when the Fund was set up. He stated that if the consultant's wanted to approach the Legislature he would be all for it. However, he stated the process requires a lot of backing to even make it to the Legislature for consideration. It was a huge deal just getting the Fund set up at the current collection fee. He stated that the Legislative Audit told the Board that, in order to be considered for a fee increase, the Board would have to move from a cost accounting to a cost control model before asking for more money.

Mr. Wadsworth stated that the Board had approached the Legislature when the Fund was in debt and had borrowed money. The Board was informed they needed to put cost control measures in place before they could ask for a fee increase. Mr. Wadsworth stated that the Board would have to have a stronger case before they could lead the charge in seeking a fee increase.

Mr. Johnson stated that if there were increased clean-up costs and if there could be a projected need for more money, that might be a stronger case. He wasn't sure where things stand. Mr. Wadsworth stated that if there were multiple catastrophic events in one year, there would be no money to pay the regular claims and that could provide a strong basis for requesting the \$1,000,000.00 be returned to the Fund or for a fee increase to create more revenue.

Mr. Thamke stated that another tension at play was the backlog. He said that if Montana counted the backlog as a liability against the Fund, there would be solvency issues. If EPA would make an issue of it, before the Legislature, that may raise it to the level of getting a fee increase. He stated that the only way to address the backlog was to have a more robust Fund.

Mr. Wadsworth stated that the backlog was part of the Actuarial Study that was recently conducted. He said that how aggressively the work on clean-up is addressed depends on how much revenues the Fund has. If EPA was not satisfied with the rate of closure on release clean-ups, that funding could then become an issue that could precipitate a fee increase request.

Mr. Johnson asked if the prioritization of sites played a role in how the money is spent.

Mr. Thamke indicated that many of the people in attendance at this Board meeting were also just at the EPA Region 8 meeting. Mr. Breen asked Mr. Wadsworth if he wanted to comment on any EPA meeting highlights.

Mr. Wadsworth stated that there were struggles expressed in every state regarding their Petroleum Funds and the challenges they face. Some states have received Big Oil subrogation money, and in the state of Colorado, that money was being used for site redevelopment. In Colorado, they chose sites that were active gas stations, and they are providing grant incentives to upgrade systems, and have also provided low interest loans. However, Montana has not seen any recovery from their Big Oil cases yet.

Mr. Wadsworth related that Utah had suffered a 55,000-gallon loss in Provo. The tank that had the release had a crack down the side that leaked every time the tank was filled with fuel. When it was filled, it would leak down to about 20% capacity left, and then it would pass the Veeder Root system tests. The owner was only looking for the one passing record per month, so they didn't catch the loss. Mr. Wadsworth stated that in Montana that would be considered an unusual operating circumstance. Also, at the EPA Region 8 All States conference, the company selected for some of the clean-up activity, CalCon (sic), provided a presentation on a new technology for soil vapor extraction.

Mr. Johnson was excused at 11:25 am because of a scheduling conflict and he returned to the meeting at 11:30 am.

Ms. Leanne Hackney, Underground Storage Tank (UST), Leak Prevention Program Supervisor, who also attended the EPA conference, spoke about UST aspects of the conference. She stated that the new rules for the Montana UST Leak Prevention Program will be published this Fall. The program is applying for primacy again and EPA is currently reviewing Montana's draft rules. Walk-through inspections and equipment testing were hot items of discussion and working with other states was very helpful.

### **Board Staff Report**

Mr. Wadsworth presented the Board staff report. He noted that the Claim Value graph was misnamed. He noted that the reimbursements by County, from inception of the program was included in this packet. He indicated that the image was presented at the Montana Petroleum Marketers Conference and Ms. Pirre thought it might be of interest to the Board members, therefore it was included in the packet.

### **Petroleum Tank Cleanup Section (PTCS) Report**

Ms. Amy Steinmetz, Petroleum Tank Cleanup Section Supervisor, provided a report to the Board. She presented the summary of confirmed and resolved petroleum releases since the last report that covered the dates of March 26 through June 4, 2018. There were two (2) new confirmed releases and twelve (12) were closed. Within the calendar year to date, there were eleven (11) new releases and twenty-two (22) closed. There are currently 990 active releases, 635 that are active and Fund-eligible, 99 that are active and ineligible, and 258 that are active for which Fund eligibility is undetermined or pending.

Ms. Steinmetz asked Mr. Johnson what type of information he was seeking concerning trends that would lead to needing an increased revenue. She stated that she would be happy to provide that information at the September meeting. Mr. Johnson stated that it would be nice to get an idea of what the DEQ backlog is, by prioritization. He wanted to know what the trends were. For example, more activity for new tank releases, or less historical releases, or perhaps fewer sites for clean-up that cost more, and what it would look like, but he didn't know how a cost could be associated with that.

Mr. Thamke stated that the Tier two report (Tier II Soundness Assessment of the Montana State Fund) contained that information.

Ms. Steinmetz asked Mr. Wadsworth if there hadn't been a cost projected for the backlog. Mr. Wadsworth stated that there was an estimate. Ms. Steinmetz said that it could be provided at the September meeting.

Ms. Steinmetz said that the PTCS Case Manager, Shannon Calla, currently has a WP that had the new technology referred to by Mr. Wadsworth. She stated that the company is named CalClean, and the technology is a multi-phase extraction technology where tubes are put into wells that are structured for this technology and a great amount of product is recovered through the process. The WP hasn't been reviewed but may be before the Board in September.

### **Tire-Rama, Havre, Fac #60-15135, Rel #4723, WP #10811, Priority 1.2**

Ms. Steinmetz stated that this site had sold gas until 1982. The dispensers were removed at that time and that the underground storage tanks were removed in 1984. The anecdotal evidence shows that there were two tanks removed and one closure in place of a waste oil storage tank. The waste oil tank was determined to be partially under or very close to the building. Later, during investigation of an up-gradient release, it was determined that there was a release at this site.

A Remedial Alternatives Analysis (RAA) was requested and completed. Excavation combined with bio-remediation appeared to be the most effective technology. The current WP #10811 is only for the excavation work. After the excavation is complete, PTCS will re-evaluate the site to see if the bio-remediation is still necessary.

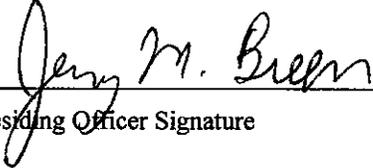
The estimated cost for this WP is \$114,699. The WP is for excavation of contaminated soils and may include the removal of an underground waste oil tank. The excavation WP consists of structural evaluation of the existing building, a geophysical evaluation of the former waste oil UST basin, removal and replacement of approximately 2,500 ft<sup>2</sup> of pavement, monitoring well abandonment, excavation and disposal of approximately 520 yd<sup>3</sup> of contaminated soil, and the completion of a Release Closure Plan and Excavation Report.

Mr. Wadsworth stated that Board staff comment was regarding the \$114,699 estimate given by PTCS. After Board staff reviewed the WP, the approved budget was \$111,153.22. There is a difference because of adjustments for pulling the tank, as those costs are not eligible for Fund reimbursement. Additionally, the Board staff obtained a more accurate disposal cost from Hill County Landfill and the actual costs are lower than the WP proposed amount.

### **Public Forum**

The next scheduled board meeting date is September 10, 2018.

The meeting was adjourned at 11:37 am.

  
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Presiding Officer Signature